

Annette W. Jarvis, Utah Bar No. 1649  
 RAY QUINNEY & NEBEKER P.C.  
 36 South State Street, Suite 1400  
 P.O. Box 45385  
 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

Lenard E. Schwartz, Nevada Bar No. 0399  
 Jeanette E. McPherson, Nevada Bar No. 5423  
 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 Facsimile: (702) 892-0122  
 E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

*Attorneys for Debtors and Debtors-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

**DECLARATION OF SUSAN M. SMITH  
 IN SUPPORT OF USA CAPITAL FIRST  
 TRUST DEED FUND LLC'S (1) FINAL  
 REPORT, AS SUPPLEMENTED, AND  
 (2) MOTION TO CLOSE CASE AND  
 REQUEST FOR FINAL DECREE**

**(Affects USA Capital First Trust Deed  
 Fund, LLC)**

**Date: September 28, 2007**

**Time: 1:30 p.m.**

1 I, Susan M. Smith, hereby declare and state as follows:

2 1. On April 13, 2006 ("Petition Date"), USA Commercial Mortgage Company  
3 ("USACM"), USA Capital Realty Advisors, LLC ("USA Reality"), USA Capital Diversified Trust  
4 Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC ("FTDF" and together with  
5 DTDF, the "Funds"), and USA Securities, LLC ("USA Securities") (collectively, the "Debtors")  
6 filed petitions seeking relief under Chapter 11 of the Bankruptcy Code in the United States  
7 Bankruptcy Court for the District of Nevada (the "Chapter 11 Cases"). By order entered on June  
8 9, 2006, the Court approved the joint administration of the Chapter 11 Cases.

9 2. Effective as of the Petition Date, Mesirow Financial Interim Management, LLC  
10 ("Mesirow") has been employed as crisis managers for the Debtors, and Thomas J. Allison of  
11 Mesirow has served as the Debtors' Chief Restructuring Officer. I am employed by Mesirow as a  
12 Senior Vice President, and I have worked extensively for the Debtors and have overseen  
13 substantial aspects of these cases under Mr. Allison's direction, including the winding up of  
14 FTDF's affairs.

15 3. This Declaration is based on my personal knowledge or, if so stated, upon  
16 information and belief. Thus, all matters set forth in this Declaration are based on (a) my personal  
17 knowledge, (b) my review of relevant documents and records, (c) my view, based upon my  
18 experience and knowledge of the Debtors' business and financial condition, and/or (d) as to  
19 matters involving United States bankruptcy law or rules, my reliance on advice of bankruptcy  
20 counsel to the Debtors. If I were called upon to testify, I could and would testify competently to  
21 the facts set forth herein.

22 4. On July 16, 2007, FTDF filed a "Final Report of Action Taken and Progress  
23 Towards Confirmation of Confirmed Plan of Reorganization" [Docket No. 4178] ("Final Report")  
24 pursuant to Article VIII, Section T of the Debtors' Third Amended Joint Chapter 11 Plan of  
25 Reorganization (the "Plan"), Paragraph 74 of the Court's "Order Confirming the Debtors' Third  
26 Amended Joint Chapter 11 Plan of Reorganization," as Modified Herein" [Docket No. 2376] (the  
27 "Confirmation Order"), and the Court's Order date April 30, 2007 related to the implementation of  
28

1 the confirmed Plan [Docket No. 2376]. Unless otherwise stated, all capitalized words and terms  
 2 used herein are defined in the confirmed Plan. FTDF's Final Report has been supplemented  
 3 pursuant to the "Supplement to USA Capital First Trust Deed Fund LLC's Final Report of Action  
 4 Taken and Progress Toward Consummation of Confirmed Plan of Reorganization ("Supplemental  
 5 Report"), which is being filed concurrently with the filing of this Declaration. These papers,  
 6 together with this Declaration, are filed in support of the "Motion to Close Case and Request for  
 7 Final Decree" [Docket No. 4242] ("Motion to Close") that was filed by FTDF on July 27, 2007.

8 5. As set forth below, as of this date, the FTDF Estate has been fully administered.

9 **I. Transfer Of Assets, Effectuation Of Compromises, And Distributions Made To Date.**

10 6. Since the Petition Date, and at all times relevant to the matters discussed herein,  
 11 FTDF held an operating account, which was established with Cash of FTDF from all sources  
 12 commingled together ("FTDF Operating Account").

13 7. The Confirmation Order approved the sale of the assets of FTDF and certain assets  
 14 of USACM to Compass Partners, LLC ("Compass" and the "Compass Sale"), which is  
 15 memorialized in an Asset Purchase Agreement dated December 8, 2006 between FTDF and  
 16 USACM, as sellers, the remaining Debtors, as acknowledging parties, and Compass, as purchaser  
 17 (the "APA").

18 8. On February 16, 2007, the Compass Sale closed. Immediately upon the closing of  
 19 the Compass Sale:

- 20 a. Compass became the owner of, among other things, FTDF's interests in loans and
- 21 assumed control of such property.
- 22 b. Cash sale proceeds in the total amount of \$ 47.6 million (the sales price adjusted
- 23 for previously collected loans under the terms of the APA or "Sale Proceeds")
- 24 were transferred by Compass to the USACM and FTDF estates.
- 25 c. Approximately \$ 32.9 million of the Sale Proceeds was allocated to the FTDF
- 26 estate, and paid to and deposited by FTDF into the commingled FTDF Operating
- 27 Account.
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- d. Sale Proceeds in the amount of \$ 9.5 million were held in reserve pending the resolution of disputes related to this portion of the Sale Proceeds.
  - i. Of these unallocated Sale Proceeds, approximately \$8.25 million was deposited in an escrow account pending resolution of a dispute between USACM and FTDF as the allocation of this portion of the Sale Proceeds ("Allocation Dispute").
  - ii. The remaining approximately \$ 1.25 million in unallocated Sales Proceeds were deposited into an escrow account pending resolution of a dispute between Compass and the Debtors related to Compass's claim that the purchase price was subject to reduction ("Compass Dispute").
9. On or as of March 12, 2007, the Effective Date of the Plan:
  - a. A Cash reserve was established for FTDF pursuant to Art. VII, section B.2 of the confirmed Plan, in the amount of each Disputed Claim and/or Equity Interest asserted against FTDF (the "FTDF Art. VII Reserve") from Cash on deposit in the FTDF Operating Account.
  - b. Pursuant to the "Order Granting Second Joint Motion for Order for Implementation of Confirmed Plan" [Docket No. 2987], a Cash reserve was established with Cash on deposit in the FTDF Operating Account to insure that sufficient Cash exists to implement the Plan (the "FTDF Ordered Expense Reserve").
  - c. The "Intercompany Compromises" set forth in Art. IV, section E of the Plan among and between, in relevant part, (i) USACM and FTDF, (ii) FTDF and DTDF, and (iii) FTDF and USA Realty, including the releases set forth in Art. IV, section E and Art. VIII, section A of the Plan, became effective. All of the Debtors, including FTDF, took all actions necessary to make any and all payments and/or transfers of assets required by the Intercompany Compromises.

The Intercompany Compromises have been consummated in full, including, in relevant part, all of the Compromises to which FTDF was a party.

i. as part of the compromise among and between USACM and FTDF, set forth in Art. IV, section E.2 of the confirmed Plan:

1. "Prepaid Interest Collections" related to FTDF in the total amount of \$2,557,307 (defined in the Plan as the "FTDF Prepaid Interest"), that were being held in USACM's segregated collection account, were transferred on the Effective Date to USACM's operating account, commingled with other Cash, and disbursed in accordance with the confirmed Plan.
2. USACM transferred \$969,000 to FTDF pursuant to the agreed Professional Fee/Cost Allocation/Management Fees compromise included in the Plan, this Cash was deposited by FTDF in the commingled FTDF Operating Account and, as set forth herein, was disbursed pursuant to the confirmed Plan.
3. FTDF transferred all of the "FTDF Litigation Claims," except the "Non-assignable FTDF Litigation Claims," to the USACM Trust.
4. All waivers and releases made between FTDF and USACM were deemed effective under the confirmed Plan.

ii. as part of the compromise among and between FTDF and DTDF, set forth in Art. IV, section E.3 of the confirmed Plan:

1. The first part of the FTDF Payment was made by FTDF to DTDF.<sup>1</sup> Thus, FTDF transferred \$500,000 to DTDF's commingled operations account, and this Cash is now the property of Post-Effective Date DTDF.

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<sup>1</sup> See ¶ 10.b *infra* (second part of the FTDF Payment was made after the Effective Date).

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2. FTDF transferred the “FTDF Transferred Assets,” as defined in the Plan, to DTDF.
3. A Disbursing Agent Agreement, as amended, has been entered into and approved by the Court so as to provide a mechanism for disbursements, if any, that may be payable to FTDF members by the USACM Trust pursuant to Art. IV, Section A.3.b and A.3.d of the Plan after the FTDF case is closed, and to handle all matters remaining under Art. VII of the Plan, including undeliverable or returned distributions.

iii. as part of the compromise among and between FTDF and USA Realty, set forth in Art. IV, Section E.4 of the confirmed Plan:

1. the release set forth in Art. IV, Section E.4.a of the confirmed Plan has been effected.
2. The Chapter 11 Case of USA Realty is almost ready to close, and FTDF will not receive any distribution from USA Realty on the Subordinated Claim provided for in Art. IV, Section E.4.b of the confirmed Plan.

10. Since the Effective Date:

a. Settlement of the Allocation and Compass Disputes. For purposes of FTDF, the Allocation and Compass Disputes were settled after the Effective Date.

- i. In settlement of the Allocation Dispute, the USACM Trust and FTDF have agreed that FTDF is entitled to \$3.8 million of the approximately \$9.5 million in unallocated Sale Proceeds, *see* ¶ 8.d *supra*. The Court has entered an Order approving this agreement [Docket No. 3958]. This \$3.8 million (“FTDF Allocated Sale Proceeds”) has been disbursed from escrow to FTDF, deposited into the commingled FTDF Operating

Account, and as set forth herein, has been distributed pursuant to the confirmed Plan.

- ii. FTDF has transferred all of its right, title and interest in and to the Compass Dispute to the USACM Trust and, therefore, it no longer has any stake in that Dispute.

b. Final Effectuation of the Intercompany Compromises. The following final and additional steps were taken to effectuate the Intercompany Compromises related to FTDF after the Effective Date:

- i. FTDF Unsecured Claim. The amount of the FTDF Unsecured Claim against USACM has been established in an agreement that has been approved by the Court. Plan, Art. IV, Section E.2.b. Percentage interests in the FTDF Unsecured Claim will be distributed to FTDF members as part of the Final Distribution.

- ii. FTDF Payment. The second part of the FTDF Payment has been made by FTDF to DTDF. Plan, Art. IV, Section E.3.a. Thus, FTDF transferred \$500,000 of FTDF Allocated Sales Proceeds to DTDF's commingled operations account, and this Cash is now the property of Post-Effective Date DTDF. By making this second payment, the FTDF Payment has been made in full.

c. Distributions to FTDF members. The following distributions, which are summarized on Exhibit 1 hereto, have been made to the approximately 950 FTDF members from the commingled FTDF Operating Account:

- i. On or about March 28, 2007, approximately \$17.3 million was disbursed from the commingled FTDF Operating Account to the approximately 950 FTDF members.



- 1                   ii. On or about May 2, 2007, approximately \$20 million was disbursed  
2                   from the FTDF Operating Account to the approximately 950 FTDF  
3                   members.
- 4                   iii. On or about June 12, 2007, \$6 million was disbursed from the  
5                   commingled FTDF Operating Account to the approximately 950 FTDF  
6                   members.
- 7                   iv. On July 6, 2007, \$3.3 million was disbursed from the commingled  
8                   FTDF Operating Account to the approximately 950 FTDF members.
- 9                   v. The above post-Effective Date distributions resulted in a return on  
10                  capital of 72%, which return on capital does not include pre-  
11                  confirmation distributions that were made to FTDF members pursuant  
12                  to the Distribution Orders or the Final Distribution that will be made in  
13                  this case.
- 14               d. Distributions from FTDF Ordered Expense. At the time that the Final Report was  
15               filed, all funds in the FTDF Ordered Expense Reserve had been released and paid  
16               in accordance with the confirmed Plan, the Second Implementation Order, and  
17               any and all other applicable Orders of the Bankruptcy Court, except for sums  
18               which remained reserved to pay FTDF Professionals upon approval of their Final  
19               Fee Applications, and implementation expenses, including post-Effective Date  
20               fees and expenses of the FTDF Committee and the professionals for FTDF and  
21               the FTDF Committee.
- 22                   i. Final Fee Applications. In June and August 2007, hearings were held  
23                   on the Final Fee Applications filed by the FTDF Committee and the  
24                   professionals for FTDF and the FTDF Committee. The Court entered  
25                   Orders approving all of these Final Fee Applications, thus allowing the  
26                   requested Administrative Expense Claims as voluntarily reduced.
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FTDF has now paid these Allowed Administrative Expense Claims in full from the FTDF Ordered Expense Reserve.

ii. Implementation Expenses. Expenses related to the implementation of the Plan, including post-Effective Date fees and expenses of the FTDF Committee and professionals of FTDF and the FTDF Committee, have been paid on an ongoing basis from the FTDF Ordered Expense Reserve. Upon finalization and payment of the remaining implementation expenses from the FTDF Ordered Expense Reserve, surplus Cash on deposit in this Reserve will be released and made subject to Final Distribution to FTDF members.

e. FTDF Art. VII Reserve.

- i. All Allowed Claims and/or Allowed Equity Interests, including all Allowed Administrative Expense Claims, have been paid in accordance with the confirmed Plan, the Confirmation Order, and any and all other applicable Orders of the Court.
- ii. As I discuss in further detail in Part II below, all objections to Disputed Claims and/or Disputed Equity Interests have been resolved, and the FTDF Art. VII Reserve has been released and distributed in accordance with the confirmed Plan, the Confirmation Order, and any and all other applicable Orders of the Court.

**II. Resolution of Proofs of Claim Filed Against FTDF**

11. As of the Effective Date, 149 proofs of Claim had been filed against FTDF.

12. The FTDF Committee, at FTDF's request, assumed the lead in objecting to these Claims and, with the assistance of FTDF, filed various omnibus objections throughout the pendency of this case seeking the disallowance of certain Claims and reclassification of certain Claims as proofs of interest. FTDF and the FTDF Committee also worked to reach various stipulations with certain claimants to resolve objections to their Claims or interests.

1           13. The chart attached as Exhibit 2 to the Final Report, a copy of which is attached  
 2 hereto as Exhibit 2, was prepared at my direction, and reflects the Disputed Claims that were  
 3 ultimately determined or agreed to be treated as Allowed Claims against FTDF. That chart, which  
 4 was prepared as of July 16, 2007, indicated that some of the Allowed Claims had amounts  
 5 outstanding. But, as anticipated in the Final Report, those Allowed Claims were paid in full prior  
 6 to July 31, 2007.

7           14. As discussed in ¶ 15 below, since the Final Report was filed, the USACM Trust  
 8 determined that at least 18 FTDF members had filed proofs of Claim against USACM. The FTDF  
 9 Committee, on behalf of FTDF, has entered into a Stipulation with one of those claimants, the  
 10 Labossiere Family Trust, agreeing to the allowance of an informal proof of Claim against FTDF in  
 11 the amount of \$1,500.00. This Stipulation was filed with the Court on September 25, 2007  
 12 [Docket No. 4883], and it is anticipated that the Court will enter an Order approving the  
 13 Stipulation. Upon the entry of such an Order, the stipulated informal proof of Claim will be  
 14 deemed an Allowed Claim and the Labossiere Family Trust will be entitled to a distribution of  
 15 \$1,500.00. This Allowed Claim will be paid as part of the Final Distribution.

### 16       **III. Resolution of Litigation**

17           15. All of the litigation involving FTDF has been resolved.

- 18           a. Matters before this Court. When the Final Report was filed, the only matters  
 19 pending before this Court involving FTDF were the allowance of the  
 20 Administrative Expense Claims requested in the Final Fee Applications, and a  
 21 “conditional” adversary proceeding which was filed by Compass against, in  
 22 relevant part, all of the Debtors on July 7, 2007, designated as Adversary  
 23 Proceeding No. 07-01105 (“Compass Proceeding”). After the Final Report was  
 24 filed, Objections were filed by the FTDF Committee on behalf of FTDF related to  
 25 certain proofs of Claim filed against other Debtors. As of this date, all of this  
 26 litigation has been resolved.

- 1 i. Final Fee Applications. Hearings on the Final Fee Applications were  
2 held in June and August, 2007, and the Court subsequently entered  
3 Orders allowing the Administrative Expense Claims asserted, as  
4 voluntarily reduced [Docket Nos. 4075-77, 4160, 4505-06 & 4570].  
5 Thus, approval of the Final Fee Applications is longer pending before  
6 the Court, and the Administrative Expense Claims allowed by the Court  
7 have been paid in full from the FTDF Ordered Expense Reserve.
- 8 ii. Compass Proceeding. Compass has voluntarily dismissed this  
9 proceeding as to FTDF.
- 10 iii. Reclassification Motions. After the Final Report was filed, FTDF  
11 learned that approximately 18 proofs of Claim had been filed against  
12 other Debtors by FTDF members. Accordingly, at FTDF's request, the  
13 FTDF Committee filed papers with the Court objecting to or related to  
14 the treatment of the Claims ("Reclassification Motions"). A hearing on  
15 the Reclassification Motions is scheduled for September 28, 2007. At  
16 this time, only one response has been filed, and it has been resolved by  
17 Stipulation, as discussed in ¶ 14 *supra*. Also, three other parties  
18 affected by the Reclassification Motions have entered into Stipulations,  
19 agreeing to withdraw their respective Claims. Upon information and  
20 belief, no other parties served with the Reclassification Motions have  
21 filed responses thereto. Accordingly, it is anticipated that the Court will  
22 enter an Order at the scheduled September 28, 2007 hearing granting the  
23 Reclassification Motions as to all of those who have not responded. The  
24 granting of the Reclassification Motions as to claimants who have not  
25 responded will not impact distributions that have been made to date.
- 26 b. Matters before the District Court. In addition to the limited matters before this  
27 Court, FTDF was a party to three appeals of the Confirmation Order before the  
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1 United States District Court for the District of Nevada ("District Court"). These  
2 appeals are no longer pending.

3 i. USA Investment Partners, LLC and several others, filed an appeal from  
4 the Confirmation Order, ultimately designated as District Court No. 07-  
5 00138. Pursuant to FTDF's motion to dismiss, this appeal was  
6 dismissed with prejudice by the District Court by Order entered March  
7 31, 2007.

8 ii. Debt Acquisition Company of America V, LLC also filed an appeal  
9 from the Confirmation Order, ultimately designated as District Court  
10 No. 07-00160. On July 24, 2007, the District Court entered an Order  
11 approving a stipulation with the Appellants to dismiss FTDF from this  
12 appeal. On August 29, 2007, this appeal was dismissed.

13 iii. Finally, the so-called "Lenders Protection Group" and the Jones Vargess  
14 Direct Lenders, filed an appeal from the Confirmation Order, ultimately  
15 designated as District Court No. 07-00072. On July 11, 2007, the  
16 District Court entered an Order approving a stipulation with the  
17 Appellants to dismiss FTDF from this appeal. On August 29, 2007,  
18 this appeal was dismissed.

19 c. State Court. On September 19, 2007, FTDF was served with a Complaint that  
20 was filed in Superior Court of Arizona, Yavapai County, designated as Case No.  
21 CV820070179. The Plaintiff in that matter has since filed a Notice of Voluntary  
22 Dismissal as to FTDF, which is attached hereto as Exhibit 3. Thus, this matter is  
23 no longer pending in the state court.  
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1 **IV. Release of the FTDF Ordered Expense Reserve and Final Distribution**

2 18. There is currently \$2,962,661.00 on deposit in the FTDF Ordered Expense Reserve.  
3 This is the only Cash left to be distributed pursuant to the confirmed Plan.

4 19. In accordance with the confirmed Plan and the Implementation Orders, the  
5 implementation expenses that I discuss in ¶ 10.d.ii must be paid from the FTDF Ordered Expense  
6 Reserve prior to the release of this Reserve. It is anticipated that within ten days of this Court  
7 entering an Order on the Motion to Close, all such expenses will be set, and any surplus in the  
8 FTDF Ordered Expense Reserve will be released.

9 20. Upon release of the FTDF Ordered Expense Reserve, FTDF will make a Final  
10 Distribution to FTDF members.

11 21. In the Final Report, FTDF disclosed that it anticipated making a Final Distribution  
12 by no later than the end of August. This Final Distribution was not made due to unforeseen  
13 circumstances related to the Reclassification Motions. Now that issues related to the  
14 Reclassification Motions appear to be resolved by Stipulation or lack of response, it is anticipated  
15 that an Order granting the Motion to Close will be entered, and that a Final Distribution will occur  
16 no later than ten days after the entry of any such Order.

17 22. Based on the information that I have to date, I estimate that FTDF members will  
18 obtain a 75% return on capital upon Final Distribution. This percentage is based on post-Effective  
19 Date distributions only, *i.e.*, the distributions discussed at ¶¶ 10.c above and the estimated Final  
20 Distribution, and does not include preconfirmation distributions that were made pursuant to the  
21 Distribution Orders.

22 23. Within ten days of making the Final Distribution, FTDF will file a Final  
23 Distribution Report with the Court, which will include a copy of an executed Disbursing Agent  
24 Agreement referenced in ¶ 9.c above.

1 **V. Miscellaneous Matters**

2 24. All distributions that have been made by FTDF since the Petition Date, including  
3 all of those made after the Effective Date which I discuss herein, are specifically itemized in the  
4 Monthly Operating Reports that have been filed with the Court.

5 25. FTDF has prepared Articles of Dissolution, which it intends to file with the State of  
6 Nevada immediately upon this Court entering Orders granting the Reclassification Motions.

7 26. The final tax returns for FTDF are being prepared, and they will be finalized and  
8 filed with the appropriate entities as soon possible after the Final Distribution is made.  
9 Furthermore, Forms K-1 will be sent to the FTDF members as soon as possible thereafter.

10 27. Upon information and belief, the Court recently approved a Settlement Agreement  
11 in the Chapter 11 case, In re HMA Sales, LLC, Case No. 07-12694, potentially involving the  
12 rights of certain FTDF members to receive a Final Distribution. FTDF will make its Final  
13 Distribution consistent with the terms of the Court-approved Settlement Agreement.

14 Dated this 27th day of September, 2007.

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18 Susan M. Smith  
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# EXHIBIT 1



**First Trust Deed Fund  
Distributions of Capital**

Beginning Capital 12/31/06	Distribution 3/28/2007	Distribution 5/2/2007	Distribution 6/12/2007	Distribution 7/6/2007	Total Distributions	Ending Capital 8/01/07
65,010,254.00	17,331,170.37	20,114,500.00	6,000,000.00	3,300,000.00	46,745,670.37	18,264,583.63
	27%	31%	9%	5%	72%	28%

# EXHIBIT 2

## First Trust Deed Fund Claims

Claimant	Allowed Claim Amount	Interest 4/13/06 - 4/30/07	Total Payment	Amount Outstanding
Kummer Keampfer Bonner Renshaw & Ferrario	\$ 25,746.92	\$ 1,311.16		\$ 27,058.08
Beadle McBride & Reeves LLP	9,822.75	500.22		10,322.97
Santoro Driggs Walch Kearney Johnson & Thompson	690.81	35.18		725.99
Nevada State Bank Corporate Banking	41,845.77	-	41,845.77	-
Pre-petition uncleared checks-Scheduled	24,155.21	1,230.10	25,385.31	-
<b>Total</b>	<b>\$ 102,261.46</b>	<b>\$ 3,076.67</b>	<b>\$ 67,231.08</b>	<b>\$ 38,107.04</b>

# EXHIBIT 3

1 Douglas C. Fitzpatrick  
2 49 Bell Rock Plaza  
3 Sedona, Arizona 86351  
4 (928) 284-2190  
5 Bar ID #005152  
6 Attorney for plaintiff

7 SUPERIOR COURT OF ARIZONA

8 YAVPAI COUNTY

9 DONNA MICHAELS,  
10 Plaintiff,

NO. CV82007 0179

11 -vs-

12 NOTICE OF VOLUNTARY  
13 DISMISSAL

14 BYSYNERGY, LLC, WESTERN  
15 UNITED LIFE ASSURANCE  
16 COMPANY, ATWELL SALVAGE  
17 & DEMOLITION, Inc., USA CAPITAL  
18 DIVERSIFIED TRUST DEED FUND,  
19 LLC, USA CAPITAL FIRST TRUST  
20 DEED FUND, M&I MARSHALL &  
21 ILSLEY BANK, JAMES B. BALL,  
22 FRED E. SCHUERMAN and GERALDINE  
23 SCHUERMAN, JOHN AND JANE DOES  
24 I through X, BLACK AND WHITE  
25 CORPORATIONS I through X,  
26 Defendants.

27 Plaintiff Donna Michaels, by her undersigned counsel, serves notice that USA Capital  
28 First Trust Deed Fund, LLC [FTDF] is dismissed from this action. FTDF has not filed an  
answer, motion for summary judgment or otherwise appeared in this action. This notice is filed


////

1 pursuant to Rule 41[a]. Arizona Rules of Civil Procedure.

2 DATED this 25 day of September, 2007.

3 LAW OFFICE OF DOUGLAS C. FITZPATRICK


4  
5 BY

  
Douglas C. Fitzpatrick  
Attorney for plaintiff

6  
7  
8  
9 COPY of the foregoing  
10 mailed this 25 day of  
11 September, 2007, to:

12 Nathan D. Meyer  
13 Harper Christian Dichter Graif  
14 2700 N. Central Avenue, Suite 1200  
15 Phoenix, Arizona 85004  
16 Attorney for BySynergy, LLC

17 Via fax to 1-801-532-7543 and regular mail  
18 Steve C. Young  
19 Ray Quinney & Nebeker, PC  
20 36 South State Street #1400  
21 Salt Lake City, Utah 84111  
22 Attorneys for FTDF

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Douglas C. Fitzpatrick